

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1361 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT

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1. Whether Reporters of Local Papers may be allowed : YES  
to see the judgements?
  2. To be referred to the Reporter or not? : YES
  3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
  4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge? : NO

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JAGDISH B BHATT

Versus

STATE OF GUJARAT  
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Appearance:

MR AMAR DAVE FOR MR PM THAKKAR for Petitioner  
MR VB GHARANIYA for Respondent No. 1  
MR JM BAROT FOR MR HS MUNSHAW for Respondent No. 2, 3  
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CORAM : MR.JUSTICE J.N.BHATT

Date of decision: 25/02/2000

ORAL JUDGEMENT

Whether the impugned order of premature retirement, dated 13.1.89, and the resultant order dated 16.1.89 are legal and valid or not, is the question to be examined and answered by this Court in this petition under Article 226

of the Constitution of India.

The petitioner has challenged the order recorded by the respondent No.2, dated 13.1.89, retiring the petitioner at the premature age of 55 years from service, inter alia, contending that it is illegal, arbitrary, discriminatory and violative of Articles 14 and 16 of the Constitution of India. The petitioner was, originally, appointed as Sub-overseer (Soil Conservation), by the order, dated 4.4.1956, and he was posted under the establishment of the respondent No.2. He was, also, promoted to the post of Agricultural Supervisor with effect from 1.1.76. He worked as Agricultural Supervisor on various places till the year 1982. In 1983, the petitioner was sent on deputation under the establishment of respondent No.3, Gujarat State Land Development Corporation Limited. It is the case of the petitioner that his service record, all throughout, since beginning has been very good and he earned remarks accordingly all throughout. It is alleged by him that he was, wrongly, implicated in a misappropriation case for which criminal complaint was filed, which, ultimately, came to be withdrawn by the concerned officer, on 10.7.91.

The birth-date of the petitioner as per the service record is, 23.11.33, and as per the provisions of Bombay Civil Service Rules, the petitioner was to retire on completion of 58 years, like that, on 30.11.91. However, the impugned order cut short his service, which is, directly, under challenge in this petition.

On behalf of the respondents, it is, inter alia, contended that the petitioner was appointed by an authority in the State of Saurashtra, as it then was. The said post is, now, equivalent to the Joint Director and, therefore, the order passed by the authority was proper. It is the case of the respondent authority that the impugned order of premature retirement came to be recorded considering the confidential reports of last 10 years and the fact that the petitioner was facing criminal prosecution involving financial irregularities. Instead of 58, the petitioner came to be prematurely retired, at the age of 55, on account of his bad record and doubtful integrity, as per the version of the respondent authority.

The petitioner has countered these allegations by filing affidavit in rejoinder. He has given elaborate account of rating of performance and marks awarded by the respondent authorities in different years. In para 6 of the affidavit-in-rejoinder, it is, specifically, stated

that service record of the petitioner for the last 10 years prior to his premature retirement was good and his annual confidential reports carried remarks of "good", "very good" and "excellent". It is, also, specifically stated that during the last 10 years, no adverse remarks had been communicated to him. Not only that, he was found fit for promotion to the post of Agricultural Supervisor and, accordingly, he came to be promoted to the post by the order dated 1.1.76. The criteria for promotion to the post of Agricultural Supervisor is merit-cum-seniority. These aspects are not controverted further.

No doubt, under the service jurisprudence, the employer or the master is empowered to review and reconsider the continuance of service of an employee beyond the age of 55 years, and in case, the authority concerned, finds that the service record is not satisfactory, or that the continuance of the employee beyond the period of 55 years for a further period of 3 years in Government employment is not for public good or for the public interest, it is always open for the employer or the authority to pass appropriate order of premature retirement depriving the employee of the further 3 years.

It cannot, therefore, be disputed that compulsory retirement under the relevant provisions is permissible and it also cannot be disputed that the exercise of power in this behalf by the authorities is subject to judicial scrutiny. The exercise of powers for imposing compulsory retirement at the age of 55 has to be exercised, reasonably and justly and not in an arbitrary manner. It is incumbent upon the authority concerned to examine and evaluate the service record and the conduct, character and the performance of the employee. The Review Committee, is therefore, obliged to consider the overall picture emerging from the service record and thereafter it has to reach a conclusion as to whether the continuance of the person beyond the age of 55 for a further period of 3 years is in the public interest or not. In the present case, the Review Committee did not recommend the case of the petitioner for further continuance of the petitioner and suggested to impose compulsory retirement on the grounds which are, in the opinion of this Court, not in existence. It appears that the Review Committee has taken a wrong view. This Court has no hesitation in finding that the the Review Committee, as such, has not considered the important aspects which it ought to have considered and it did consider certain aspects which it should not have considered. Apart from the non-application of mind to

the vital facts regarding service record pertaining to the petitioner of the last 10 years, the criminal complaint, which was one of the major artillery used against the petitioner came to be withdrawn by the authority, about which there is no dispute. Therefore, the case of the petitioner that he was, wrongly, unnecessarily and maliciously involved in the criminal complaint pertaining to alleged misappropriation of the funds is, prima facie, justified by the withdrawal of the said complaint.

In the light of the facts and circumstances, the impugned order of compulsory retirement in purported exercise of the provisions of Rule 161 of the Bombay Civil Service Rules (BCSR) is not sustainable and is required to be quashed and set aside. The following undisputed facts need to be noted:

- (1) The petitioner was never communicated with any adverse remarks in the period of last 10 years which was considered by the Review Committee.
- (2) The service record of last 10 years was good, very good and excellent, which fact remained uncontroverted.
- (3) The main base of the order of premature retirement was the criminal complaint of misappropriation of public fund in which the name of the petitioner, which came to be withdrawn.

In the light of the aforesaid facts and circumstances, the impugned order of premature retirement is, totally, meritless and deserves to be quashed. The view which this Court is inclined to take is very much reinforced by following decision of the Hon'ble Apex Court.

1. State of Gujarat & anr. v. Suryakant Chunilal Shah, (1993) 3 GLR 2060.

Now, the question would arise as to whether the petitioner should be directed to be reinstated while quashing the impugned order, so that he could get the monetary benefits of salary of three years during which he admittedly did not work or the service of three years only to be considered for the purpose of pension and other incidental benefits.

In the light of the facts and circumstances and considering the equity, this Court is inclined to record that the petitioner should be given the benefit of 3

years service period only for the purpose of pensionary and retirement benefits and no order with regard to the arrears of salary during the period of three years which otherwise he would have received, had he worked, be given.

In the result, the petition is allowed. The impugned order is quashed and set aside. It is directed that the petitioner shall be treated to have completed the period of superannuation without any event in so far as allegations in the present case are concerned and therefore, he shall be deemed to have been reinstated during that period, however, without any backwages. It is further directed that he shall be entitled to claim all pensionary benefits as if he had completed the full period of superannuation and the Department shall calculate the pensionary benefits accordingly and pay to the petitioners, as early as possible, but not later than the end of June 2000. Rule is made absolute to the above extent with no order as to costs.

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(vjn)